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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MARIA WIELE, Petitioner and Respondent, v. GREGORY L. CHASTAN, Defendant and Appellant.	B285457 (Los Angeles County Super. Ct. No. BP155895)

APPEAL from a judgment of the Superior Court of Los Angeles County, William P. Barry, Judge. Affirmed.

Law Office of Asher A. Levin, Asher A. Levin; Ferguson Case Orr Paterson and Wendy C. Lascher for Defendant and Appellant.

Schofield & Grossman, Anthony C. Grossman; Shaw Koepke & Satter and Jens B. Koepke for Petitioner and Respondent.

Decedent Elton McEldowney passed away on August 22, 2014. The probate court held as a matter of law that decedent's holographic will entitled respondent Maria Wiele to the entire $2.21 million residue of decedent's estate. Decedent's cousin Gregory Chastan appeals, contending that the probate court failed to recognize that the will is ambiguous, failed to consider extrinsic evidence, and erred in awarding the residue of the estate to respondent. Under the applicable rules of construction, including that the existence of a will raises a presumption that the testator intended to dispose of all of his property, and that an interpretation that avoids intestacy is preferred, we conclude that the trial court correctly ruled that respondent is the sole residual legatee of the decedent's estate. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Decedent prepared a holographic will dated May 28, 2014, which provided as follows: "Will [¶] This is to establish Maria Wiele, my dear friend, as Addministrator [*sic*] of my estate . . . Maria until the estate is all settled, I would like to give my Leasees [*sic*] a break by giving them a reduced rate, they will pay only the taxes, Ins [*sic*], utilities, all costs on all three properties. Also Loan pymt. That way there should be no expen[s]es to the estate. Maria, I hope there[']s enough to get you that Sportscar [*sic*] you always wanted. Have fun with it. Love, Elton McEldowney PS [*sic*] Don't forget Nautalus [*sic*] Society fast, neat & easy." Decedent passed away on August 22, 2014.

On September 18, 2014, respondent filed a petition to probate the will, identifying appellant as decedent's cousin. In a Proof of

Holographic Instrument, respondent stated that she had known decedent for 10 years as a "friend, neighbor and roommate." She had lived next door to decedent from 2005 to December 2013 and moved into his residence sometime after December 2013.[1] She assisted him by running errands and paying bills.

In February 2016, respondent filed a Petition for Determination of Persons Entitled to Distribution, asserting that she was the sole beneficiary of the estate. She asserted that the statement, "Maria, I hope there is enough to get you that Sportscar you always wanted," was a residuary clause naming her as the residuary legatee. She attached declarations from herself, her attorney Charles Schofield, and her three brothers–Alex, Gerardo, and Luis Tovar.[2]

Respondent stated in her declaration that she met decedent in September 2005 and, by the end of that year, she began inviting him to family barbecues and holiday dinners at her house. In the last year of decedent's life, respondent began helping him with errands until she moved into his house in August 2014. Decedent did not pay her for her assistance, and she did not pay rent when she moved into his house. When decedent expressed interest in contacting an attorney, respondent asked Schofield to meet with him.

According to respondent, decedent "did not want anything to go to his relatives." Respondent discussed cars with decedent and told him

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[1] Respondent subsequently stated in a declaration that she moved into decedent's home in August 2014.

[2] We will refer to respondent's brothers by their first names.

she wanted "fast cars like an Aston Martin or a Bugatti Veyron," to which decedent would reply, "Maybe one day," and "you never know, you might get it one day." When respondent told decedent she wanted to trade a car from her ex-husband for a new car, decedent said, "No, just wait."

Alex stated that he met decedent in December 2007. A year before decedent's death, decedent told Alex that he enjoyed having respondent help him with his errands and was thinking of remodeling an upstairs room in his house for respondent and her daughter to live in after respondent finalized her divorce.

Gerardo declared that he met decedent in 2006 at a party at respondent's house. In June 2012, decedent told Gerardo he was sad about respondent's divorce and that "he was coming up with a plan to help [respondent] out for the better and for [respondent] to help him with his estate." In 2013, decedent told Gerardo that he wanted respondent and her daughter to stay in his house and wanted respondent to learn how to manage his properties.

Luis stated that he met decedent in 2007 or 2008 at respondent's house. Luis regularly spoke to decedent about "what [he] wanted to happen with his stuff when he passed." In early 2012, while Luis was helping decedent with a family tree, decedent told Luis he did not know his family well because they did not visit him. In 2013, decedent told Luis that he did not want to leave anything to his relatives and wanted respondent and her daughter to live in his house.

Schofield stated in his declaration that he visited decedent at his home on August 20, 2014. Decedent said that he did not want his

relatives to get anything when he died and that he already had a will, but Schofield did not see the will. Schofield advised decedent to prepare a trust because of his "real estate holdings." Schofield returned to decedent's home the following day, and decedent signed a power of attorney and an advanced health care directive. Schofield again advised decedent to prepare a trust and a new will in order to avoid a probate proceeding, but decedent said he wanted to think about the beneficiaries. Decedent wanted respondent to "receive a significant share of the estate, but . . . he needed to give more thought to the other beneficiaries since his relatives would not be receiving anything according to his wishes." Schofield said he would check with him again, but decedent died on August 22, 2014 without having prepared the trust and new will.

Larry Lee Dailey, decedent's cousin, filed an objection on behalf of himself and numerous other relatives, but not appellant. They challenged respondent's assertion that she was the residuary legatee, arguing that the statement on which respondent relied was ambiguous and could be interpreted as a gift of an unspecified amount of money to buy a car, rather than the entire $2,210,000 estate.

Appellant filed a Statement of Claim of Interest, asserting that he had had a good relationship with decedent. He described the relationship between his father and decedent's father, who were cousins and good friends. He stated that he maintained contact with decedent and called or visited him every few months. He last saw decedent in July 2014, when appellant was about to undergo seven weeks of cancer treatment. Decedent did not tell appellant that he was dying, but he

told appellant that "there might be some cars in [his] future." Decedent told appellant that respondent had asked if she could move in with him, but he had declined because he did not want a child and dog in the home with him. Instead, decedent had decided to allow respondent "to move into one of his rental units for free." Six weeks later, respondent called appellant to let him know that decedent had died and had left his house and cars to her and her brother. Appellant asked respondent for a copy of the will, but she referred him to Schofield, who told appellant there was no will. Appellant explained that decedent's mother was one of nine siblings and that decedent never married and had no children. He stated that decedent had approximately 54 heirs.

Dailey filed an objection, arguing in part that respondent must overcome the presumption of fraud and undue influence pursuant to Probate Code section 21380.[3] The statute provides: "A provision of an instrument making a donative transfer to any of the following persons is presumed to be the product of fraud or undue influence: [¶] . . . [¶] (3) A care custodian of a transferor who is a dependent adult, but only if the instrument was executed during the period in which the care custodian provided services to the transferor, or within 90 days before or after that period." (§ 21380, subd. (a)(3).) Dailey pointed out that respondent had not been employed since February 2014. Instead, she had been assisting decedent with errands, shopping, and doctor's appointments, receiving remuneration in the form of free room and

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[3] Unspecified statutory references will be to the Probate Code.

board for herself and her daughter. Dailey further argued that respondent admitted in her deposition that, because decedent was too feeble to sign any documents, she had placed her hand over his to sign the power of attorney and advanced health care directive.

At a January 6, 2017 hearing, the probate court noted that the holographic will had been admitted as a will. The court stated that the will created a gift to respondent of the residual assets of the estate, reasoning that the will made no mention of donative gifts to anyone other than respondent. After hearing argument from respondent's counsel that decedent knew that the sports car respondent wanted was a Bugatti Veyron, not a Ford GT, the court stated, "I didn't go down that path with regard to the reference to the word 'sports car' and the other evidence that [respondent's counsel] was talking about because it seems to me . . . that common sense would indicate that he intended to give something more than administrative fees. . . . [¶] I think under California law, that was a donative purpose and I believe . . . it's a donation or a gift that encompasses the entire residual assets of this estate." The court stated that there was donative intent and that "it's a matter of law." However, the court stated that it could not decide as a matter of law the question of undue influence under section 21380 because it presented factual issues. The court set deadlines for discovery to be completed and continued the matter.

The objections based on a presumption of invalidity under section 21380 subsequently were withdrawn. The probate court thus held that "[t]he Will, by its own terms and as a matter of law, and in light of its earlier admission as a holographic instrument, constitutes a gift of the

entire residual estate to [respondent]." The court ordered that respondent was the sole beneficiary entitled to distribution of the residue of the estate. Appellant filed a notice of appeal.[4]

DISCUSSION

I. *Standard of Review*

"'[I]t is "a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence." This rule has been specifically applied by the California Supreme Court to the interpretation of wills.' [Citation.] Where an issue can be determined from evaluating the document on its face, and by reference to applicable law, we can make such determination independently of the lower court. [Citations.] 'Where, however, extrinsic evidence is properly received, and such evidence is conflicting and conflicting inferences arise therefrom, the appellate court will accept or adhere to the interpretation adopted by the trial court provided that that interpretation is supported by substantial evidence.' [Citations.]" (*Estate of Williams* (2007) 155 Cal.App.4th 197, 205–206; see also *Burch v. George* (1994) 7 Cal.4th 246, 254 ["The interpretation of a will or trust instrument presents a question of law unless interpretation turns on the credibility of extrinsic evidence or a conflict therein. [Citations.]"].)

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[4] The notice of appeal purports to be on behalf of appellant and numerous "additional aggrieved parties," including Dailey. However, the court has been informed by Dailey's counsel below that they no longer represent Dailey and that he is not a party to this appeal; there is no indication in the record that anyone other than appellant is a party.

Although the parties presented evidence in support of their positions, the probate court specifically stated several times that it was not considering the evidence because its interpretation of the will was a matter of law. Our review accordingly is de novo.

II. *Principles of Will Interpretation*

The resolution of this case rests on the basic principles of will interpretation, which we set forth below.

"'[T]he paramount concern in the construction of wills is to ascertain and give effect to the intent of the testator . . . .' [Citation.] Rules of construction [in the Probate Code] guide the court in determining the testator's intent. [Citation.]" (*In re Estate of DeLoreto* (2004) 118 Cal.App.4th 1048, 1052 (*DeLoreto*); see also *Estate of Goyette* (2004) 123 Cal.App.4th 67, 70 (*Goyette*) [""'"The paramount rule in the construction of wills, to which all other rules must yield, is that a will is to be construed according to the intention of the testator as expressed therein, and this intention must be given effect as far as possible."'"].) "'All other rules of construction are subordinate to this cardinal rule and in its application presumptions are to be indulged which will prevent entire or partial intestacy. [Citation.]' [Citation.]" (*Estate of Karkeet* (1961) 56 Cal.2d 277, 281 (*Karkeet*).)

"The fact that a testator makes a will raises a presumption that he intended to dispose of all of his property. Therefore, whenever possible such interpretation must be placed upon the provisions of a will as will prevent partial or total intestacy [citations]." (*Estate of Grove*

(1977) 70 Cal.App.3d 355, 362 (*Grove*); see also, e.g., *Estate of Taylor* (1953) 119 Cal.App.2d 574, 581 (*Taylor*) ["The fact that the testator left a will implies he did not intend to die intestate"].) "[W]here, by the terms of the will, it is not made clear that intestacy, either partial or whole, was intended, an interpretation which avoids intestacy will be adopted [citation]." (*Estate of O'Connell* (1972) 29 Cal.App.3d 526, 531 (*O'Connell*).)

"[O]f two modes of interpretation, that which will prevent intestacy, either total or partial, is preferred. [Citations.] This rule has specific applicability to residuary clauses, which, it has been held, are to be broadly and liberally construed with a view to preventing intestacy as to any part of the testator's estate. [Citations.] Furthermore, the presumed intent of the testator to avoid intestacy is fortified where the will specifically excludes the testator's relatives from sharing his estate. [Citations.]" (*Estate of Christen* (1965) 238 Cal.App.2d 521, 527-528 (*Christen*).)

"'[Dispositive] or operative words are not necessary to create a testamentary disposition of property.' [Citation.] 'Bequests by implication have from remote times been sustained where no direct language in a will is found to support them but where from informal language used such reasonable construction can be placed on it as implies an intention to make a bequest.' [Citation.]" (*Estate of Cummings* (1968) 263 Cal.App.2d 661, 666-667 (*Cummings*).) Where, as here, "the will was a holographic one, it should be interpreted in a layman's sense [citation]." (*O'Connell*, *supra*, 29 Cal.App.3d at p. 530.)

Applying these principles, we conclude that the probate court correctly concluded as a matter of law that respondent is the beneficiary of the residue of decedent's estate.

III. *Analysis*

Appellant argues that the will does not name any beneficiaries or use words such as "residue," "balance," or "remainder." He contends that the will therefore failed to make any bequests at all and failed to name a residuary legatee. As we explain, he is mistaken.

We begin with a common sense construction of the document as a whole. Decedent wrote "Will" across the top of the document. He wrote the document with the express contemplation of his death: in the last line, he instructed respondent on the disposal of his remains: "PS [*sic*] Don't forget Nautalus [*sic*] Society fast, neat & easy."

With his death in mind, decedent expressed his intent to "establish [respondent], my dear friend, as Addministrator [*sic*] of my estate." Addressing respondent, he wrote that "until the estate is all settled, [he] would like to give [his] Leasees [*sic*] a break by giving them a reduced rate." To implement that goal, he instructed respondent that his lessees "will pay only the taxes, Ins [*sic*], utilities, <u>all costs</u> on <u>all three</u> properties. Also Loan pymt. That way there should be no expen[s]es to the estate." He made no provision for a rental amount to be paid to the estate above these costs. Then, addressing respondent, he wrote: "Maria, I hope there[']s enough to get you that Sportscar [*sic*] you always wanted. Have fun with it. Love, Elton McEldowney."

In referring to his "hope there[']s enough to get you that Sportscar [*sic*] you always wanted," decedent was referring to leaving respondent (his "dear friend" and "Addministrator" [*sic*]) the amount in the estate left over after the estate was settled, whatever that amount might be, the tenants being responsible for paying rent equal only to the costs associated with the properties until settlement, but no additional rent above that figure. Further, given that the language of the will does not suggest the decedent contemplated any distribution from his estate to anyone other than respondent, the will is most reasonably understood not as imposing a limit on the amount decedent intended respondent to receive (an amount limited to the price of the sports car), but as leaving her the residue of the estate with the hope that it would be enough to buy the sports car she always wanted.

Taking the document as a whole, there is simply no doubt that decedent intended the document to be his will. Because the document is, as a matter of law, a will, we must apply the rules of construction to ascertain and give effect to decedent's intent. (*DeLoreto*, *supra*, 118 Cal.App.4th at p. 1052.) The fact that decedent made a will raises the presumption that he intended to dispose of all of his property and thus did not intend to die intestate. (*Grove*, *supra*, 70 Cal.App.3d at p. 362; *Taylor*, *supra*, 119 Cal.App.2d at p. 581.) Accepting appellant's challenge to the will would result in full, or at least partial intestacy. It is thus contrary to the intent expressed by the making of a will. It is also contrary to the common sense interpretation of the document as a whole, which we have set forth above. (*Estate of Bateman* (1962) 205 Cal.App.2d 792, 795 ["The intention of the testator 'is to be gleaned

from a reading of the will as a whole and not from the apparent meaning of any clause or clauses considered alone, and an interpretation is to be preferred which will prevent a total intestacy if justified by the language used in the will'"].)

Although appellant concedes that the making of a will raises a presumption that the testator intended to dispose of all of his property, he argues that it does not raise a presumption that respondent was the sole beneficiary or residual legatee. True, decedent did not name beneficiaries, nor did he *expressly* state that respondent was to receive the residue of his estate. However, "[t]echnical words are not necessary to give effect to a disposition in an instrument." (§ 21122.) Moreover, "as the will was a holographic one, it should be interpreted in a layman's sense [citation]." (*O'Connell, supra,* 29 Cal.App.3d at p. 530.) Further, "residuary clauses . . . are to be broadly and liberally construed with a view to preventing intestacy as to any part of the testator's estate." (*Christen*, *supra,* 238 Cal.App.2d at p. 528.) Thus, even though decedent did not use technical language for naming a beneficiary or a residuary legatee, the common sense interpretation of the document as a whole (as we have explained) is that decedent: (1) intended to dispose of all his property, (2) specified a reduced rent to be paid by the lessees equal to the costs of the properties pending settlement of the estate, (3) hoped that there would be no further costs to the estate, and (4) intended respondent to receive the amount remaining in the estate after settlement, whatever that amount might be, in the hope she would receive enough to buy a sports car she had always wanted. (*Estate of Lawrence* (1941) 17 Cal.2d 1, 8 ["No particular mode of expression is

necessary to constitute a residuary legatee. It is sufficient if the intention be plainly expressed in the will that the surplus of the estate, after payment of debts and legacies, shall be taken by a person there designated"].)

Finally, we note that "the presumed intent of the testator to avoid intestacy is fortified where the will specifically excludes the testator's relatives from sharing his estate. [Citations.]" (*Christen*, *supra*, 238 Cal.App.2d at p. 528.) Here, the will evinced decedent's intent to dispose of his entire estate, but did not mention decedent's relatives at all. Thus, although it did not expressly exclude appellant as a relative, it manifested an intent to leave the residual of the estate to respondent to the exclusion of all others. (*O'Connell*, *supra*, 29 Cal.App.3d at p. 531.)

Appellant contends that the probate court erred by concluding the will was unambiguous and failing to consider extrinsic evidence. We disagree. "California law allows the admission of extrinsic evidence to establish that a will is ambiguous and to clarify ambiguities in a will. [Citations.]" (*Estate of Duke* (2015) 61 Cal.4th 871, 879.) "An ambiguity arises when language may be applied in more than one way. To say that language is ambiguous is to say there is more than one semantically permissible candidate for application, though it cannot be determined from the language which is meant. Every substantial claim of ambiguity must tender a candidate reading of the language which is of aid to the claimant. One must ask what meanings are proffered and examine their plausibility in light of the language. A party attacking a meaning succeeds only if the attacker can propose an alternative,

plausible, candidate of meaning. [Citation.]" (*Estate of Dye* (2001) 92 Cal.App.4th 966, 976 (*Dye*).)

"[I]nstead of speaking in terms of ambiguities, the proper analysis requires that we ask whether *the language of the will is* 'reasonably susceptible' of the interpretation suggested by a rule of construction or extrinsic evidence. [Citation.]" (*DeLoreto*, *supra*, 118 Cal.App.4th at p. 1053, italics added.) Here, even considering appellant's proffered extrinsic evidence, in light of the applicable rules of construction, there is simply no plausible way to read the specific language of the will as a whole (that is, not speculating about what is *absent* from the will but could have been included, but rather examining the entirety of what is *actually written* in the will), so as to find the language reasonably susceptible to an interpretation that might favor appellant: namely, that the decedent did not intend to dispose of his entire estate with respondent as the residuary legatee, or failed to make provision for distribution of the entire estate, and instead intended to leave all or part of it to pass outside the will by intestacy to unnamed relatives. A court cannot "'"invoke [extrinsic] evidence to write a new or different instrument."' [Citation.]" (*Dye*, *supra*, 92 Cal.App.4th at p. 978.) Appellant thus did not sufficiently establish the need to consider extrinsic evidence. (*Dye*, *supra*, 92 Cal.App.4th at p. 976.)

Appellant relies on *Karkeet, supra,* 56 Cal.2d 277, in which the decedent left a holographic document that stated in full: "'This is my authorization to Miss Leah Selix, 832 Green St., San Francisco, California, to act as executrix of all and any property and personal

effects (and bank accounts) to act without bond or order of Court.'" (*Id.* at p. 279.) The probate court concluded that Selix was the decedent's residuary legatee. On appeal, State of California argued that the document only nominated her as executrix and that the estate should escheat to the state because there were no heirs. The California Supreme Court concluded that "the paramount rule which requires that wills be interpreted according to the testator's intention, and that such intention be given effect as far as possible [citation] constitutes, in the circumstances of the instant case, reasonable grounds for a conclusion that the decedent effectively made a gift of her net estate to her friend, Leah Selix, and that such a result was her manifest intention in the preparation and execution of her will. We cannot say, however, that such a conclusion is compelled as a matter of law from the will itself. A reading of the will, and the provision for an 'executrix' in these circumstances may, as stated, justify the foregoing conclusion in the minds of reasonable men, and at the same time justify a different conclusion in the minds of other, equally reasonable men. Where a technical term within a will, used by a testator presumed to be unfamiliar with its strict meaning, is to be construed according to the testator's intent, the mere use of the term may well be deemed to create an uncertainty or ambiguity. [Citations.] Such an ambiguity is to be resolved from the words of the will 'taking into view the circumstances under which it was made.' [Citation.] The court in the case at bar should have considered extrinsic evidence for the purpose of resolving this apparent ambiguity. [Citations.]" (*Id.* at p. 283.) Selix had offered

extrinsic evidence, but the state had not. The court therefore reversed and remanded for further proceedings. (*Id.* at p. 284.)

Karkeet does not suggest that the trial court in the present case should have considered the extrinsic evidence. In *Karkeet,* the decedent named an executrix, but made no provisions for distribution to her. By contrast, in the instant case, decedent not only named respondent as the "administrator" of his estate, but (as we have explained) also expressed donative intent–he wanted her to receive the balance of his estate. *Karkeet* is of no help to appellant.

In short, we must construe the will according to the testator's intent and give effect to this intent. (*Goyette*, *supra*, 123 Cal.App.4th at p. 70.) The result of interpreting the will in the manner urged by appellant–that is, as naming no beneficiaries and no residuary legatee–would result in decedent's estate going to his relatives through intestacy. This interpretation would contradict "the rule that prefers a construction of a term of a will that avoids complete or partial intestacy" (*Goyette*, *supra*, 123 Cal.App.4th at p. 74), and is unsupported by the language of the will. Therefore, we conclude that the trial court properly ruled that respondent is entitled to the entirety of decedent's estate.

DISPOSITION

The order appealed from is affirmed. Respondent shall recover her costs on appeal.

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WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.